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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,147	01/02/2004	Jon Michel Greenwood	P1643US01	1589

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EXAMINER	
SALAD, ABDULLAHI ELMI	
ART UNIT	**PAPER NUMBER**
2157	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/751,147	GREENWOOD, JON MICHEL	
	Examiner	Art Unit	
	Salad E Abdullahi	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/20/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This application has been reviewed. Original claims 1-17 are pending. The rejection cited stated below.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 7 and 13 are rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. 6,675,212 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

4. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,675,212. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between claim 1 of the instant application and claim 1 of the Patent is that the following language was added to claim 1 of the instant application:

> "enabling the user to specify at least one characteristic for monitoring data requests;"

5. Claim 1 of the instant application is compared to claim 1 of the Patent in the table below.

Claim 1 of the instant application	**Claim 1 of the Patent No. 6,675,212**
In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of: **enabling the user to specify at least one characteristic for monitoring data requests**;	In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of:
monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;	monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;
backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests; and	backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests; and
making the data tile available to the user via the user interface once the download of the data file is completed.	making the data file available to the user via the user interface once the download of the data file is completed.

In view of the "obviousness - type" double patenting rationale enunciated in Georgia Pacific Corp v United States Gypsum Co., 52 USPQ2d 1590, U.S. Court of

Appeals Federal Circuit 1999, instant application claim 6 merely defines an obvious variation of the invention claimed in the co-pending application claim 6.
The above added limitation describes a subset of all possible conditions being monitored in the Patented claim 1. As in the Georgia Pacific case claim 1 of the instant application is merely a subset of claim 1 of the Patented claim 1. For example, enabling the user to specify at least one characteristic for monitoring data requests as recited in claim 1 of the instant application is a subset of monitoring data requests generated via the user interface and transmitted via the computer-network interface, as recited in claim 1 of the Patent. Monitoring data requests generated via the user interface and transmitted may enabling the user to specify at least one characteristic for monitoring data requests. Hence claim 1 of the instant application is merely subset of claim 1 of the Patent.

These differences are not sufficient to render the claim patentably distinct and therefore a terminal disclaimer is required.

Furthermore, enabling the user to specify at least one characteristic for monitoring data requests would have been an obvious modification as it allows the user certain degree of data filtering. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to readily recognize the advantage of enabling the user to specify at least one characteristic for monitoring data requests in order to filter data request according to the user preferences.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

6. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,675,212. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between claim 7 of the instant application and claim 1 of the Patent is that the following language was added to claim 1 of the instant application:

> "said making step including generating a new instance of the user interface in which to display the data file if needed."

7. Claim 1 of the instant application is compared to claim 1 of the Patent in the table below.

Claim 7 of the instant application	**Claim 1 of the patent**
In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of:	In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of:
monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;	monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;
backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests; and	backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests; and
making the data tile available to the user via the user interface once the download of the data file is completed, **said making step including generating a new instance of the user interface in which to display the data file if needed.**	making the data file available to the user via the user interface once the download of the data file is completed.

In view of the "obviousness - type" double patenting rationale enunciated in

Georgia Pacific Corp v United States Gypsum Co., 52 USPQ2d 1590, U.S. Court of

Appeals Federal Circuit 1999, instant application claim 6 merely defines an obvious variation of the invention claimed in the co-pending application claim 6.

The above added limitation describes a subset of all possible conditions being monitored in the Patented claim 1. As in the Georgia Pacific case claim 1 of the instant application is merely a subset of claim 1 of the Patented claim 1. For example, said making step including generating a new instance of the user interface in which to display the data file if needed as recited in claim 7 of the instant application is a subset of making the data tile available to the user via the user interface once the download of the data file is completed as recited in claim 1 of the Patent. Furthermore, said making step including generating a new instance of the user interface in which to display the data file if needed may include making the data tile available to the user via the user interface once the download of the data file is completed. Hence claim 7 of the instant application is merely subset of claim 1of the Patent.

These differences are not sufficient to render the claim patentably distinct and therefore a terminal disclaimer is required.

Furthermore, generating a new instance of the user interface in which to display the data file if needed would be advantageous to display the result of downloading step. Therefore, a person having ordinary skill in the art would have readily recognized the benefit of generating a new instance of the user interface in which to display the data file if needed to ensure user to readily see when download of the is completed.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

8. Claim 13 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,675,212. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between claim 13 of the instant application and claim 1 of the Patent is that the following language was added to claim 1 of the instant application:

"making the data file available to the user via the user interface once the download of the data file is completed."

9. Claim 13 of the instant application is compared to claim 1 of the Patent in the table below.

Claim 13 of the instant application	**Claim 1 of the patented claims**
In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of:	In a computer controlled data browsing apparatus having a display, a user interface and a computer-network interface, the computer controlled data browsing apparatus being for use by a user and being capable of browsing hyperlinked data, a method for data browsing comprising the steps of:
monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;	monitoring data requests generated via the user interface and transmitted via the computer-network interface, said monitoring step performed such that, when a download of a data file, requested by a file request being one of the data requests, is temporarily delayed, the data file is identified as currently unavailable;
backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests.	backgrounding the download of the data file identified as currently unavailable in said monitoring step, said backgrounding step occurring automatically upon the data file being identified as currently unavailable in said monitoring step, and whereby said backgrounding step enables immediate continued browsing of data already made observable by the data requests; and
	making the data file available to the user via the user interface once the download of the data file is completed.
requesting the data file in a continuing fashion when download of the data file is temporarily delayed such that additional data requests for the data file are generated.	

As shown on the above table although the conflicting claims are not identical, they are not patentably distinct from each other because a comparison between instant application independent claim 13 and the claim 1 of Patent reveals the patented claim 1 are simply species of the broader claim 13 of the instant application. Hence, claim 13 of the instant application are generic to the species of the invention covered by claim 1 of the patent. Thus, the broad generic invention is anticipated by the narrower of the species of the co-pending invention, thus without a terminal disclaimer, the species claims preclude issuance of the generic application. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Furthermore, claim 13 of the instant application is added to the following language.

"requesting the data file in a continuing fashion when download of the data file is temporarily delayed such that additional data requests for the data file are generated".

However, requesting the data file in a continuing fashion when download of the data file is temporarily delayed such that additional data requests for the data file are generated" would been an obvious modification to the invention covered by instant

application claim 13 in order to ensure continuous download of the data files even if the download of the file is temporarily delayed. Therefore, one having ordinary skill in the art would have readily recognized the advantage of requesting the data file in a continuing fashion when download of the data file is temporarily delayed such that additional data requests for the data file are generated to ensure continuous download of the data files even if the download of the file is temporarily delayed.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Salad E Abdullahi whose telephone number is 703-308-8441. The examiner can normally be reached on 8:30 - 5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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